

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff, No. 1:21cr40-1/2/3

vs.

CHRISTOPHER ALLAN BODEN,  
LEESA BETH VOGT and  
DANIEL REYNOLD DEJAGER,

Defendants.

Before:

THE HONORABLE ROBERT J. JONKER,  
U.S. District Judge  
Grand Rapids, Michigan  
Monday, September 20, 2021  
Motion to Dismiss Proceedings

APPEARANCES:

MR. ANDREW BIRGE, U.S. ATTORNEY  
By: MR. JUSTIN MATTHEW PRESANT  
330 Ionia Avenue, NW  
P.O. Box 208  
Grand Rapids, MI 49501-0208  
(616) 808-2184

On behalf of the Plaintiff;

MR. BRIAN P. LENNON  
Warner Norcross & Judd LLP  
1500 Warner Building  
150 Ottawa Avenue NW  
Grand Rapids, MI 49503  
(616) 752-2089

On behalf of Defendant Boden.

1 MR. MATTHEW GEORGE BORGULA  
2 Springstead Bartish Borgula & Lynch PLLC  
3 60 Monroe Center Street, NW, Suite 500  
4 Grand Rapids, MI 49503  
5 (616) 458-6007

6 On behalf of Defendant Vogt.

7 MR. BRETT A. PURTZER  
8 Hester Law Group  
9 1008 South Yakima Avenue, Suite 302  
10 Tacoma, WA 98405  
11 (253) 272-2157

12 On behalf of Defendant Dejager.

13 REPORTED BY: MR. PAUL G. BRANDELL, CSR-4552, RPR, CRR  
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1 09/20/2021

2 (Proceedings, 1:58 p.m.)

3 LAW CLERK: The United States District Court for the  
4 Western District of Michigan is now in session. The Honorable  
5 Robert J. Jonker, chief judge, presiding.

6 THE COURT: We're here on the case of the United  
7 States against Chris Boden and others, 1:21cr40. We have a  
8 motion to dismiss from the three remaining Defendants that's  
9 addressed to Counts 1 to 14 of the superseding indictment.  
10 Maybe it's the regular indictment. Is it superseding or the  
11 original?

12 MR. PRESANT: Original.

13 THE COURT: Original indictment. So there hasn't been  
14 a superseding. In any case, the first 14. And we've read the  
15 materials of course. I wanted it to be scheduled for a hearing  
16 because certainly when I first started reading through the  
17 materials bitcoin was pretty new to me. I had some questions  
18 as well at the plea colloquy of Co-Defendant Swink. I've had a  
19 chance to go through it now. I appreciate the briefing of the  
20 parties and we'll give you each a chance to highlight where you  
21 stand on it.

22 For what it's worth, my sense is that after reading  
23 all the materials, that the Defense has the uphill climb here  
24 that the two premises featured, bitcoin isn't money and there  
25 was no transmission in any event, are going to be difficult to

1 square with what the statute that is § 1960 all by itself has  
2 for definitional purposes, and certainly beyond that broader  
3 authority. But I am willing to listen and make sure I  
4 understand where the Defense is coming from, but I wanted you  
5 to know that as you started. Don't know who wants to go first.  
6 Mr. Lennon, you were top of the line I think on the signatures  
7 so I'll start with you.

8 MR. LENNON: Well, in my --

9 COURT REPORTER: Could we have appearances, please?

10 THE COURT: Oh, I'm sorry. Let's do that. Go ahead.

11 MR. PRESANT: Good afternoon, Your Honor. Justin  
12 Presant for the United States.

13 MR. LENNON: Good afternoon, Your Honor. Brian  
14 Lennon, Warner Norcross & Judd, with my client Chris Boden.

15 THE COURT: All right. Thank you.

16 MR. BORGULA: Good afternoon, Your Honor. Matt  
17 Borgula on behalf of Lisa Vogt, who is seated to right.

18 THE COURT: Thanks.

19 MR. PURTZER: Your Honor, good afternoon. Brett  
20 Purtzer here on behalf of Mr. Dejager, standing to my right.

21 THE COURT: Okay. Thanks. Great. Welcome everybody,  
22 and we'll go to Mr. Lennon.

23 MR. LENNON: Thank you, Your Honor.

24 What we were hoping that the Court would see this as  
25 an interesting issue. There is no Sixth Circuit case law.

1       There is a, we think, a very robust opinion out of New York in  
2       Petix by the United States Magistrate Judge who really looked  
3       at this issue. But in preparing over this weekend, I decided  
4       just to do a little ground game. Went to the D&W, asked Tony  
5       if I could pay for my groceries in bitcoin. The answer was no.  
6       Got a haircut. Asked if I could pay for it in bitcoin, the  
7       answer was no, and so on. Can't buy coffee and anything else.  
8       So the fact that other judges -- District Court Judges and  
9       otherwise, have determined otherwise with arguably not very  
10      robust analysis, we're hoping the Court will dive a little  
11      deeper and look at the fact that bitcoin, whether it's billed  
12      with a big B or little B, cryptocurrency in general, is not  
13      money pursuant to 18 USC 1960.

14               We also have the issue with looking at the clear, I  
15      believe, legislative intent from the Patriot Act of what this  
16      was meant to do. Not are -- which is not addressed by any of  
17      the behavior alleged in the indictment.

18               I'll acknowledge that the transmitting aspect, which  
19      is actually defined in the statute, is a little tougher  
20      analysis, but I don't think the Court needs to get there. I  
21      think it's easiest, cleanest, and most appropriate just for the  
22      Court to look at whether bitcoin is under the more narrow  
23      definition under Black's or Webster's that it's backed by a  
24      government currency. And --

25               THE COURT: You got to be a little concerned about El

1 Salvador before you go too far down that route. They've just  
2 adopted it as their currency.

3 MR. LENNON: I don't think I'll ever want to turn to  
4 El Salvador or Venezuela or any place like that as a standard  
5 that we should follow. In this case bitcoin is chattel. It  
6 meets the indicia of chattel much more so then it does of  
7 money, and a key component is that, you know, the elements that  
8 it is not exchanged the way that money would be. It is  
9 exchanged more the way services could be done, paid for by  
10 money or a whole list of things. And again, just the practical  
11 analysis is that, you know, it does have value. There is no  
12 doubt about it. That value obviously wildly fluctuates, but at  
13 the end of the day the holder of that is very limited as to  
14 what they can, quote-unquote, buy with that. And it's  
15 certainly by no means a common form of currency or money as  
16 defined.

17 So that's -- I know the Court -- I don't want to  
18 rehash -- you know, I know the Court has read our briefs, but  
19 we believe that that is the cleanest, easiest, most compelling  
20 and most appropriate argument is that we ask the Court to find  
21 that it's not money pursuant to the criminal statutes. And  
22 frankly, you know, turning to Title 31 or turning to FinCEN  
23 guidance should not, in light of everything else, the practical  
24 nature of it, the fact that it meets more of the elements of  
25 the property, the fact that the legislative history doesn't --

1       you know, none of that conduct, if you will, even alleged would  
2       be addressed under there, we'd ask this Court grant our motion  
3       and dismiss Counts 1 through 14.

4               THE COURT: All right. Just pushing you a little bit  
5       on your example. If I went to your store for my haircut or  
6       coffee or whatever else you went to get, and I tried to pay  
7       with Euros, I bet they wouldn't have taken my Euros either, yet  
8       you don't doubt Euros are money.

9               MR. LENNON: No doubt Euros are backed by -- but they  
10      are -- well, there may be some that --

11              THE COURT: There may be some that take bitcoin, too.  
12      You just have to look for the little sign in the shop window.

13              MR. LENNON: But Euro also -- again, so that would  
14      address how universally exchanged they are. And obviously, we  
15      haven't done any kind of statistical study, but I would guess  
16      that it's -- might be more likely, maybe not Euros, but  
17      Canadian coin or something like that particularly around the  
18      border that you find more businesses that would accept that  
19      than bitcoin for services. You know, there is obviously  
20      exchange rates that are -- that are available to look at.  
21      You'd have to be fairly sophisticated as a merchant to find out  
22      what the bitcoin rate is on that day. You'd have to have an  
23      account. Whereas a Euro or Canadian bill or English -- or  
24      Irish punt, you know, there is banks that would exchange those,  
25      and banks, as far as I know, do not exchange bitcoin.

1 THE COURT: Okay. Thank you.

2 MR. LENNON: Thank you, Your Honor.

3 THE COURT: Who wants to go next? Mr. Borgula?

4 MR. BORGULA: Your Honor, I won't repeat the same  
5 thing Mr. Lennon said or the issues that we have identified in  
6 our briefs. I would like to address the Court's example. I do  
7 think that Canadian money is accepted. Growing up in Detroit  
8 certainly Canadian coins and dollars were universally accepted  
9 along with U.S. currency.

10 THE COURT: Around here it depends on the exchange  
11 rate. If it's fairly close they take it, and if it wasn't for  
12 a while then they wouldn't take my Canadian quarters.

13 MR. BORGULA: You had to slip them in without anyone  
14 noticing. That's why they started -- we didn't like our Susan  
15 B. Anthony dollars because they looked too much like the loons,  
16 the Canadian dollars, and they screwed up the soda machines.

17 I do think that if -- you know, if El Salvador goes to  
18 a situation where they have bitcoin, then I don't think anybody  
19 at the airport exchange counters are going to be taking any El  
20 Salvador and -- the microphones pick everything up.

21 I do think that takes it out of the category of  
22 currency that's in the normal course of exchange and I  
23 anticipate you would see that. But to the Court's point, I  
24 think in the future electronic currency is where we're headed.  
25 And at some point in the future bitcoin or other currencies



1       like this are going to be regulated by governments, and they  
2       are going to become more mainstream. But what's not in the  
3       future yet is the RICO statute, 1960. I think that that is --  
4       at the time that was drafted and at the time the Bank Secrecy  
5       Act was drafted, bitcoin certainly wasn't something that  
6       anybody in the legislature was thinking of, and so this is a  
7       model of the courts at this point determining whether or not it  
8       fits into what at the time was not even known. I think that  
9       the Congress at some point will heavily regulate these currency  
10      exchanges -- electronic currency exchanges, but we are not  
11      there yet, and I think that the Court must follow the law as  
12      currently drafted as opposed to how it's going to be drafted in  
13      the future. And we touch a little bit on it in our briefs,  
14      Your Honor, but for now we ask that the Court recognize that as  
15      drafted right now the Title 18 offense doesn't include bitcoin  
16      or any electronic currency as currency, Your Honor.

17               THE COURT: Okay. Thank you.

18               Is it Purtzer? Welcome. Am I pronouncing that right?

19               MR. PURTZER: You are. Thank you, Judge. And thank  
20      you very much for the opportunity. Just as I traveled a ways  
21      doesn't mean I have to speak but I just want to make one  
22      comment --

23               THE COURT: Sure.

24               MR. PURTZER: -- in respect to Your Honor's question  
25      to Mr. Lennon. Judge, you are likely correct that a barber may

1 or may not take a Euro or may or may not take a Canadian  
2 currency for purposes of a haircut, but if you offered a U.S.  
3 dollar they certainly are going to do that. The flip side of  
4 that is if I go to France or Switzerland or Canada and I offer  
5 them a U.S. dollar or I go to Taiwan, they are going to take my  
6 U.S. dollars. That is a recognized form of currency. There is  
7 no question the value of my U.S. dollars. If I were to offer  
8 the same vendors a cryptocurrency, bitcoin or whatever else,  
9 there is absolutely no guarantee, one, that they would  
10 recognize it, secondly, they would take it. And so as both  
11 Mr. Lennon and Mr. Borgula stated, it hasn't been regulated yet  
12 by Congress. Congress can do that, and they are -- frankly,  
13 with respect to the other cases that were cited by the  
14 government in their brief, they just assumed -- and all due  
15 respect to the judge, they assumed that money equals  
16 cryptocurrency, and that's really not the case. And the Petix  
17 case frankly is the only real case that gave any type of an  
18 analysis as to what differentiates bitcoin from money, and the  
19 reasoning is sound in that case.

20 Now, understanding it's simply a report and  
21 recommendation, and we understand that, but the analysis is  
22 good. It's appropriate, and it talks about what we are talking  
23 about that it states in the quotes, and this is actually  
24 quoting from an Eleventh Circuit case in an unpublished  
25 opinion. It says while bitcoin can be exchanged for items of

1 value, they are not commonly used as means of exchange. They  
2 are accepted by some but not all merchants or service  
3 providers. And as Mr. Borgula said, it may be something that  
4 happens in the future but it's not here now. And we are  
5 dealing with what is occurring currently.

6 So respectfully, Your Honor, we would urge that  
7 bitcoin and frankly any cryptocurrency that might be at issue  
8 does not equate to money and urge the Court to grant the  
9 motion.

10 THE COURT: All right. Thank you.

11 Go ahead.

12 MR. LENNON: One other point, Your Honor?

13 THE COURT: Sure.

14 MR. LENNON: And that's just the manufacturer of the  
15 cryptocurrency, which is done by -- through -- anybody with a  
16 computer can create these things.

17 THE COURT: Or anybody with a really big computer.

18 MR. LENNON: Well, yes, but you can't do that -- I  
19 mean. It would be clearly illegal to be manufacturing Euros or  
20 hundred dollar bills with your copier. So it's manufactured in  
21 a significantly different way as well.

22 THE COURT: Okay. We'll go to Mr. Presant for the  
23 government.

24 MR. PRESANT: Thank you, Your Honor.

25 Like Defense counsel, I won't get into all the

1 arguments raised in the briefing but just want to highlight one  
2 and then make a couple responses to some legal issues in the  
3 reply brief.

4 Under the authority cited in our brief, including the  
5 courts who have interpreted 1960 and 5330 and the regs  
6 promulgated thereunder, it's clear that bitcoin is funds,  
7 quote-unquote, funds both as that word appears in 1960 and  
8 5330, and it's also, quote-unquote, value that substitutes for  
9 currency that's used in the regs issued under 5330 as part of  
10 the Bank Secrecy Act.

11 And I think part of where we depart from the Defense  
12 view of this issue is 5330 -- yes, 1960 contains its own  
13 definition of funds, but 5330 and the regulations issued under  
14 5330 are expressly referenced in 1960, and that indicates  
15 Congress's delegation of authority to define some of these  
16 issues to the department of the treasury.

17 And that leads me into the legal issue I referenced,  
18 which is to the extent that in their reply brief Defense  
19 Counsel are arguing that this Court should not look at those  
20 regulations or the FinCEN guidance, I think the Court not only  
21 should as other courts have, but it probably should afford some  
22 amount of deference to the treasury department's regulations  
23 and guidance. And I was wondering after I read the reply brief  
24 whether any courts had done that, and I found two. So I'll  
25 give the Court and Defense Counsel the cites for those. One is

1 United States versus Mazza-Alaluf. That's M-a-z-z-a, hyphen,  
2 A-l-a-l-u-f. That's Southern District of New York, 2009, 607  
3 F.Supp2d 484, which accorded Chevron deference under the Bank  
4 Secrecy Act. And the other is one that was reversed, though, I  
5 believe reversed in part, though, I believe on other grounds.  
6 It's a district court decision out of the Northern District of  
7 California in 2014. That's United States versus Hom, H-o-m.  
8 And that's 45 F.Supp.3d 1175. And so I think it would be  
9 appropriate for this Court to afford some deference if it found  
10 that it needed to.

11 Now, the Government's view is just --

12 THE COURT: Before you get to that.

13 MR. PRESANT: Sure.

14 THE COURT: I was going to ask you about how important  
15 you think Chevron deference is to the Government's position,  
16 because Chevron deference isn't very popular in the Sixth  
17 Circuit or at least certain segments of the Sixth Circuit.

18 MR. PRESANT: The popularity of deference is  
19 declining, Your Honor, which is the reason I was about to make  
20 my next point, which is to say I don't think it's that  
21 important. I think the Court can just look at 1960 and  
22 interpret funds. Also looking at the express incorporation of  
23 5330, and say, we don't -- I don't need to defer to the agency,  
24 but if the Court thought it was a close case I think that's an  
25 argument the government would like the Court to consider

1 whether it was appropriate to afford some form of deference  
2 whether it's Chevron or our. I suppose it would depend on the  
3 subissue the Court was considering.

4 Just to give one example of the agency's own express  
5 interpretation under the law as it existed at the time of the  
6 conduct alleged in the indictment, responding to Mr. Borgula's  
7 point about whether the courts and Congress and the treasury  
8 department have gotten there yet, under 31 CFR 1022.380(e), the  
9 treasury department is explicit that the consequence of failing  
10 to comply with § 5330 of the statute or the regulations  
11 thereunder, and then it goes onto discuss a number of civil  
12 penalties. And at the end of that subsection it says, see 18  
13 USC 1960 for criminal penalty for failure to comply with the  
14 registration requirements of 31 USC 5330 or the section. And  
15 so as we argue in our brief, I think it's quite clear that 1960  
16 is the penalty for failing to register as the Defendants did in  
17 this case.

18 And unless the Court has any questions we'll just rely  
19 on the other arguments in our brief. Thank you, Your Honor.

20 THE COURT: All right. Thank you, Mr. Present.

21 Go to any reply from the Defense, and then, also -- so  
22 help me make sure I understand the practical significance. Of  
23 course, I can understand anybody facing multiple charges would  
24 be happy to see any number of them go away or all of them, but  
25 regardless of what happens on this, the Defense still has to

1 deal with 15 to 27 is it, or 28?

2 MR. LENNON: That's correct, Your Honor. 28 for  
3 Mr. Boden.

4 THE COURT: Okay. So the structuring and then the  
5 three in particular claims that are tied to the proceeds of  
6 different kind of illegal activity, drug activity.

7 MR. LENNON: That's correct, Your Honor.

8 THE COURT: Okay. Go ahead. Any reply?

9 MR. LENNON: And if I may before I start, may I ask  
10 Mr. Presant for the years of those two cases cited for the  
11 Chevron deference?

12 THE COURT: One was 2009. I think that's the  
13 Mazza-Alaluf.

14 MR. PRESANT: Yeah. And then the Hom case was 2014.

15 MR. LENNON: Okay. I ask because bitcoin wasn't  
16 invented until 2009.

17 Your Honor, again, it goes to our argument in the  
18 reply brief that we should be applying the plain meaning of the  
19 these words, particularly of money under the criminal statute,  
20 and then pointing out and emphasizing that -- you know, that  
21 this twisted -- I would refer to it as not clear or not  
22 straight logic of looking at the regulations that are  
23 implementing the civil statute that mention criminal penalties  
24 as well should not be the Court's analysis. I think the Court  
25 can take -- can look to simply the definitions of money, the

1 definitions of property, and the other arguments, and dismiss  
2 this exercise in logic of rely -- particularly the problem of  
3 relying on regulations.

4 And I also agree, I think Chevron deference is not  
5 only be questioned in the Sixth Circuit, but I think there is  
6 some things teed up for the Supreme Court as well. I don't  
7 think that should be the standard that we look at. We  
8 shouldn't rely on the agencies who are actually promulgating  
9 the rules to provide the definitions, particularly when we have  
10 a situation where we -- everybody knows what money is. We can  
11 fit it into one thing or the other, whether bitcoin is actually  
12 money or property. We believe it's property. Thank you.

13 THE COURT: All right. Mr. Borgula?

14 MR. BORGULA: Nothing further, Your Honor. Thank you.

15 THE COURT: Mr. Purtzer?

16 MR. PURTZER: Your Honor, thank you. Nothing further.

17 THE COURT: I want to thank the parties for their  
18 briefing. As I said, I did want to have a hearing on it not  
19 because I didn't plan to prepare in advance. Quite the  
20 contrary. Because I wanted to make sure I had my arms around  
21 an issue that's new to me at least or at least was new at the  
22 time of taking Mr. Swink's plea.

23 I've had a chance to read each parties' position, and  
24 the major cases that each are relying on as well as the  
25 statutory authority, and I do think I am prepared to give you a



1 decision today so that you can go forward with the case.

2 I do intend to deny the motion to dismiss Counts 1 to  
3 14 because fundamentally I do disagree with the Defense  
4 premises which are carefully outlined up front early and often.  
5 No. 1, that bitcoin isn't money within the meaning of § 1960,  
6 and that there wasn't -- or at least isn't alleged to be  
7 transmission in any event within the meaning of 1960.

8 I think the contrary is how I would read, really, the  
9 plain language of § 1960, even without having to resort to the  
10 Bank Secrecy Act and certainly to the Bank Secrecy Act  
11 regulations.

12 We all know that the general standard for dismissal of  
13 an indictment is a high bar that generally as long as the  
14 Government is alleging the elements of the statutory offense,  
15 questions about exactly what the factual circumstances were are  
16 going to be for the jury. And that's the starting point from  
17 my perspective.

18 When I get to the statutory language that is key to  
19 all 14 counts in the indictment, not just the conspiracy to  
20 operate an unlicensed money transmitting business in Count 1  
21 and to the operation of that in Count 2, but then to the  
22 individual charges in Counts 4 to 14, as well as the conspiracy  
23 to launder money both promotional and concealment forms. The  
24 key pivot is whether or not the Government has fairly alleged  
25 that what happened here is or could, and if the jury accepts

1 the proofs, amount to the unlicensed transfer of money or the  
2 operation of an unlicensed money transmitting business.

3 When I look at the statute, § 1960, it's not as though  
4 we have to rely just on our understanding of the word money or  
5 our understanding of the word transmitting. There does in  
6 (b) (2) at least appear to be some effort to moving toward what  
7 Congress had in mind by money transmitting. And it indicates  
8 the term money transmitting includes transferring funds on  
9 behalf of the public by any and all means, including but not  
10 limited to transfers within this country or to locations abroad  
11 by wire, check, draft, facsimile or courier.

12 To the point that bitcoin wasn't in the eyes of the  
13 legislature and necessarily or other potential forms of moving  
14 funds that may well be, but I think Congress addressed that by  
15 talking about any and all means, including but not limited to.  
16 To me that evinces a Congressional purpose to capture any form  
17 of movement of funds, whether it was on the ground at the time  
18 Congress was enacting it or yet a gleam in some entrepreneur's  
19 eyes. Because the point here was not to simply define and  
20 directly regulate everything Congress knew about at the time,  
21 but to address in a meaningful way the broader problem, which  
22 was movement of funds that were not traceable in the way that  
23 the ordinary bank system is or other forms of fund transfer.

24 So I think Congress certainly did not directly  
25 regulate bitcoin under § 1960 and they haven't done it yet.

1 Certainly the Commodity Futures Exchange Commission and others  
2 are thinking about it now, but that's not the only way to  
3 regulate or legislate regarding something like a new  
4 technology, bitcoin. To me you have to look at it  
5 functionally, and in my -- at least as alleged in the  
6 indictment, I think certainly what the Government has alleged  
7 is a movement of funds from one address to another.

8 What we have is repeated allegations that the  
9 Defendants got cash from customers in exchange for bitcoin, and  
10 then the bitcoin was moved from a wallet associated with one of  
11 the Defendants to a wallet associated with one of the purveyors  
12 of the cash, and that, on its face, is something that fits  
13 comfortably in my mind with transfer of funds.

14 It may be that the bitcoin representation of funds is  
15 not as liquid as a U.S. dollar to be sure. Maybe not as liquid  
16 as a Euro. Maybe not as liquid as some other currency like an  
17 Irish punt, for example, but it's something still in common  
18 parlance that we talk about as digital currency or  
19 cryptocurrency because it has important features in that  
20 primarily the value is in what it can get you, not the fact  
21 that you happen to have some electronic address with bitcoin in  
22 your wallet.

23 Yes. It's nice to have carbon deposit in the bank,  
24 but the real importance of it is that you can trade it or  
25 translate it into something else that you want for your life

1 and goods or services, so in that sense I think bitcoin or  
2 other digital currency comfortably fit within the ordinarily  
3 meaning of the funds whether we are looking at it the way we  
4 talk about it generally in the Oxford Dictionary or other  
5 general discussions of the term. And I think one of the cases  
6 the Government cited for that, United States against Harmon  
7 addresses that in a meaningful way, 474 F.Supp3d 76, from the  
8 district -- of the District of Columbia in 2020.

9 When I move beyond my simple understanding or general  
10 understanding of what the words themselves say to me when I  
11 read § 1960, I look beyond that to what I would consider every  
12 case I have been able to find or that every -- that any party  
13 has cited to me, except for Petix, and all of them find that  
14 bitcoin qualifies as money, and the movement of money as  
15 alleged here would qualify as money transmitting, and I won't  
16 take the time to cite them all. They are in the brief of the  
17 Government at least. The Defense has addressed some of them,  
18 but they are, as far as I can tell, unanimous, and that doesn't  
19 make them right. We all understand that a whole bunch of  
20 judges can be wrong just as much as any one, but I think that  
21 at least in my reading they make sense for the reasons I have  
22 already addressed.

23 And Petix, although it points out in the important  
24 recommendation a different way of looking at it or ways in  
25 which bitcoin is different, does not, to my way of thinking,

1       persuasively undercut what I have described as my common  
2       understanding of funds and transmission in the bitcoin context.  
3       They may not function -- that is bitcoin may not function in  
4       the same way the U.S. dollar or a Euro or punt functions, but  
5       they function in an analogous enough way in my mind to fit  
6       comfortably within the definition of money transmitting  
7       contained in 18 USC 1960.

8               Those cases also go beyond 1960 and do talk about the  
9       Bank Secrecy Act, and in particular, Title 31 § 5330 that has  
10      an even broader definition of money transmitting business. At  
11      least looking at the statutory language of 530 -- or 5330 is, I  
12      think, fair in the context of defining what 18 USC § 1960 means  
13      because 1960(b)(1)(B) explicitly refers to that section. And  
14      it does, again, to me make clear what I think Congress did in  
15      1960 itself, a desire to sweep broadly. So it includes in the  
16      definition of money transmitting business anything other than  
17      the post office, and it covers any other person who engages as  
18      a business in the transmission of funds, and again, including a  
19      broad language, any person who engages as a business in an  
20      informal money transfer system or any network of people who  
21      engage as a business in facilitating the transfer of money  
22      domestically or internationally outside of the conventional  
23      financial institutions system. And again, to me that conveys a  
24      Congressional intent to broadly capture things that function  
25      like our conventional use of a sovereign backed currency or at

1 least can function in that fashion, and I think we get there by  
2 1960 alone. Certainly by 1960 combined with the Bank Secrecy  
3 Act statute without ever needing to get to the regulations that  
4 Mr. Presant cites in the brief and here today.

5 When we get to the regulatory levels, I suppose in my  
6 mind it's useful as a way of testing my sense of the scope of  
7 these statutes, but I am reluctant to put too much more weight  
8 on it than that. It's not just because many in the Sixth  
9 Circuit Court of Appeals have started to express some doubts as  
10 well as some members of the Supreme Court about how far Chevron  
11 deference should go generally, but I think particularly in  
12 defining what we mean by criminal wrongdoing. That carries  
13 criminal penalties. It's important to make sure that the law  
14 makers are standing up on the line and taking responsibility  
15 for what they want to define as crimes. And although treasury  
16 regulations that may change from one administration to another  
17 can be helpful check points or reality checks, I'd be reluctant  
18 to weigh too heavily on those or to rest my decision on them.  
19 If I thought that's what it depended on I'd would think a lot  
20 harder then this, but I don't.

21 In my perspective, the statue itself, § 1960 Title 18,  
22 comfortably covers what the Government has alleged in  
23 paragraphs -- Counts 1 to 14 and beyond that the Bank Secrecy  
24 Act, I think, in its statutory text, reinforces that common  
25 understanding.

1                   So for those reasons I will deny the Defense motion to  
2                   dismiss Counts 1 to 14 of the indictment, and the case can move  
3                   forward from here. Is there anything else we need to do today?

4                   MR. PRESANT: No, thank you, Your Honor.

5                   THE COURT: For from the Defense, anything else today?

6                   MR. LENNON: No, Your Honor.

7                   MR. PURTZER: No, thank you.

8                   MR. BORGULA: No.

9                   THE COURT: All right. Good to see you all.

10                  (Proceeding concluded, 2:29 p.m.)  
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## REPORTER'S CERTIFICATE

I, Paul G. Brandell, Official Court Reporter for the United States District Court for the Western District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a full, true and correct transcript of the proceedings had in the within entitled and numbered cause on the date hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my direction.

/s/ Paul G. Brandell

Paul G. Brandell, CSR-4552, RPR, CRR

U.S. District Court Reporter

399 Federal Building

Grand Rapids, Michigan 49503